

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

INTERACTIVE PLAY DEVICES LLC,

Plaintiff,

v.

TOMY INTERNATIONAL, INC.,

Defendant.

Case No.: 1:21-cv-05167

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

1. This is an action for patent infringement under 35 U.S.C. § 271, et seq., by Interactive Play Devices LLC (“IPD” or “Plaintiff”) against TOMY International, Inc. (“TOMY International” or “Defendant”). The action is for infringement of United States Patent No. 7,491,108 (the “108 Patent,” a true and correct copy is attached as **Exhibit A**) and United States Patent No. 9,868,072 (the “072 Patent,” a true and correct copy is attached as **Exhibit B**). Collectively, these patents are the “Ghaly Patents.”

THE PARTIES

2. IPD is a limited liability company formed under the laws of Texas with its registered office address located in Austin, Texas.

3. IPD is the named assignee of, owns all right, title and interest in, and has standing to sue for infringement of United States Patent No. 7,491,108, issued February 17, 2009 and United States Patent No. 9,868,072, issued January 16, 2018.

4. Upon information and belief, TOMY International, Inc. is a corporation formed under the laws of Delaware with its headquarters located in Oak Brook, Illinois and is registered

to do business in Illinois with a registered agent of Illinois Corporation Service C located in Springfield, Illinois.

5. Upon information and belief, TOMY International, Inc. is a wholly-owned subsidiary of TOMY Company, Ltd. (“TOMY Company”), a publicly-traded company. TOMY Company is an operating company that operates globally, including in the United States.

6. TOMY Company designs, manufactures, distributes and sells a wide variety of popular toys throughout the world – including Japan, China, Hong Kong, Thailand, France, the UK, and the US.

7. TOMY Company toys have been marketed, distributed and sold throughout the world, including in the United States.

8. Since at least as early as 2019, TOMY International has made, imported, marketed and sold interactive robotic products globally, including in the United States, including the Rizmo product line (*e.g.*, Berry Rizmo, Aqua Rizmo, Snow Rizmo, etc.). These products are collectively referred to herein as the “Infringing Products.”

9. TOMY International sells the Infringing Products in the United States through retail and e-commerce channels (*e.g.*, Target, Walmart) physically located in this judicial district, as well as sells and markets its Infringing Products in this State and in this judicial district through various interactive web sites, such as Amazon.com and <https://www.rizmo.com/us/>.

10. A September 12, 2019 press release by TOMY International used to promote Rizmo states:

**TOMY INTRODUCES RIZMO, AN INTERACTIVE SING-AND-DANCE TOY THAT
EVOLVES FROM BUNDLE OF FUR TO BUNDLE OF FUN WITH THE HELP OF KIDS ON
EARTH**

***Rizmo has traveled from the far reaches of the universe to arrive just in time for the
holiday season as the #1 hot toy on every kids' wish list!***

OAK BROOK, Ill. (September 12, 2019) — TOMY, a leading global designer, producer and marketer of innovative, high-quality toys, today unveiled Rizmo™, the first-ever “evolving toy” that listens, learns, remembers and actually grows—both in play value and physical form. TOMY’s decades of experience and rich industry history, and the company’s track record for proven success in innovative plush and robotics, have come together in this remarkably interactive creature. Over the last few months, Rizmo has been previewed by popular YouTube influencers and industry experts, and recently won “Best Toy” in the Variety toy category at the Tokyo Christmas Toy Trade Show, indicating that across the globe Rizmo will be one of the most highly sought-after holiday toys of 2019.

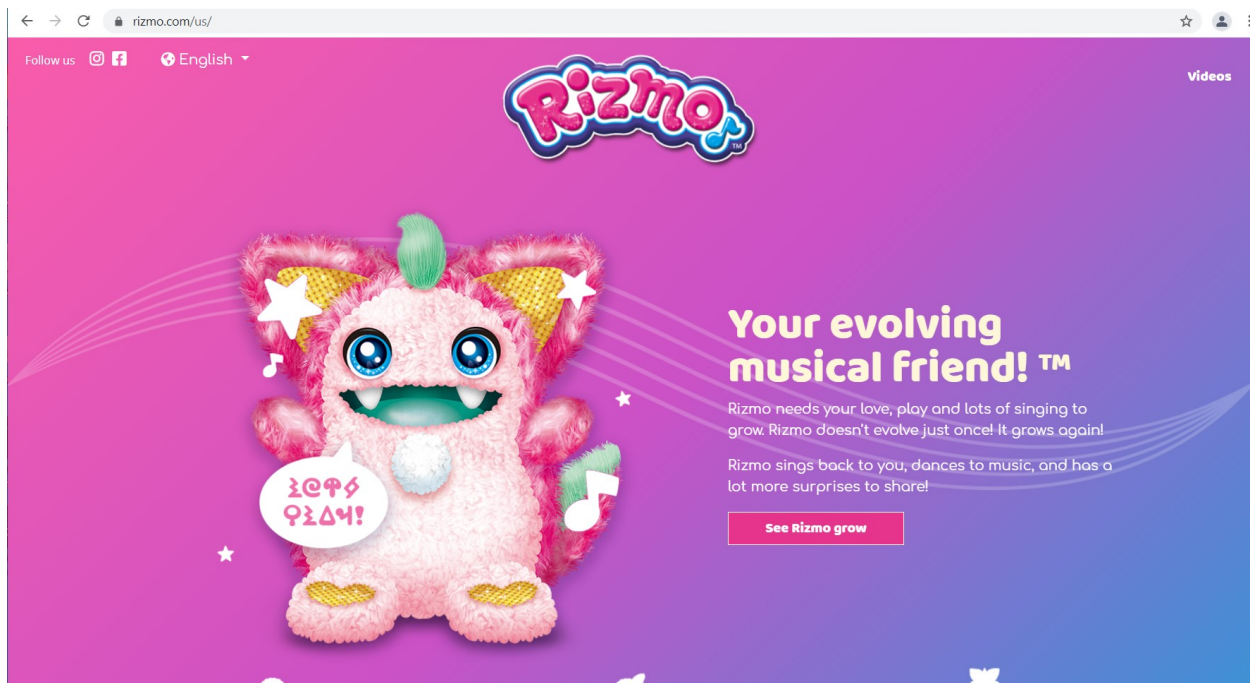
Rizmo, whose name comes from “Rhythm Monster,” is ready to play immediately out of the box. Over time, as kids interact, cuddle, sing and play with Rizmo, they’ll experience its magical evolution – growing and evolving from adorable baby to playful kid and, ultimately, to the fun, music-loving Rizmo. Once Rizmo fully evolves, additional play modes and more advanced interactive features guarantee never-ending play.

“TOMY is globally recognized as a pioneer of innovative and imaginative toys, and this heritage has led to perhaps the most engaging and charming toy ever,” explained Pete Henseler, president of TOMY International. “We have identified a unique play pattern that differentiates Rizmo from the competition with the first-ever toy that truly evolves.”

Henseler went on to say that Rizmo combines the most popular toy trends – music, virtual pets and interactive plush – into one incredibly robust product.

Full of personality and fun, Rizmo starts out with five play modes, including *Rolling Rhythms* and *Record Songs*, where children can sing to Rizmo and it will sing the same song back. *Rock-a-Bye Rizmo* mode will help put it to sleep. When Rizmo is fully evolved, there are two additional play modes to discover.

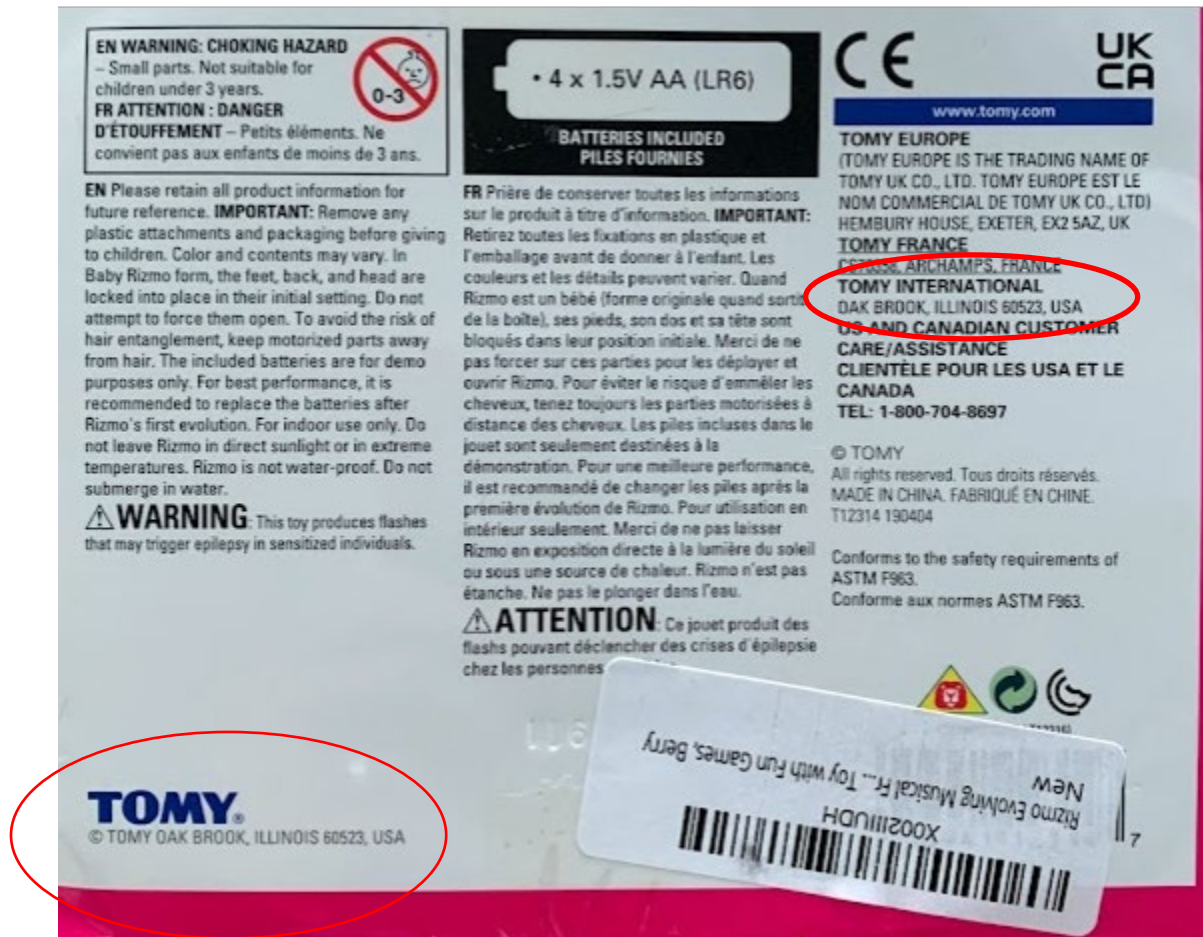
A web page created by TOMY International used to promote Rizmo further states:



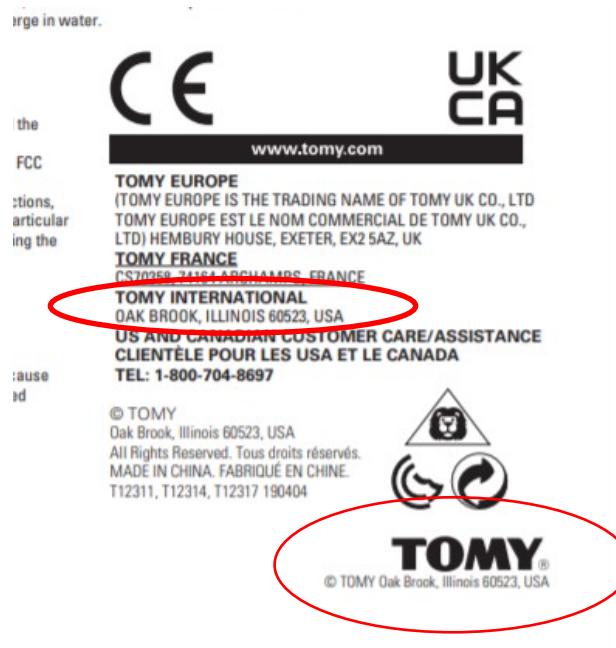
<https://www.rizmo.com/us/>

11. The Infringing Products are packaged in boxes which identify TOMY International as the manufacturer and responsible party. Inside each box are product instructions which, again, identify TOMY International as the product source.

12. For example, the following is a true and correct photograph of a portion of a Rizmo box and a portion of the Rizmo instructions identifying TOMY International:



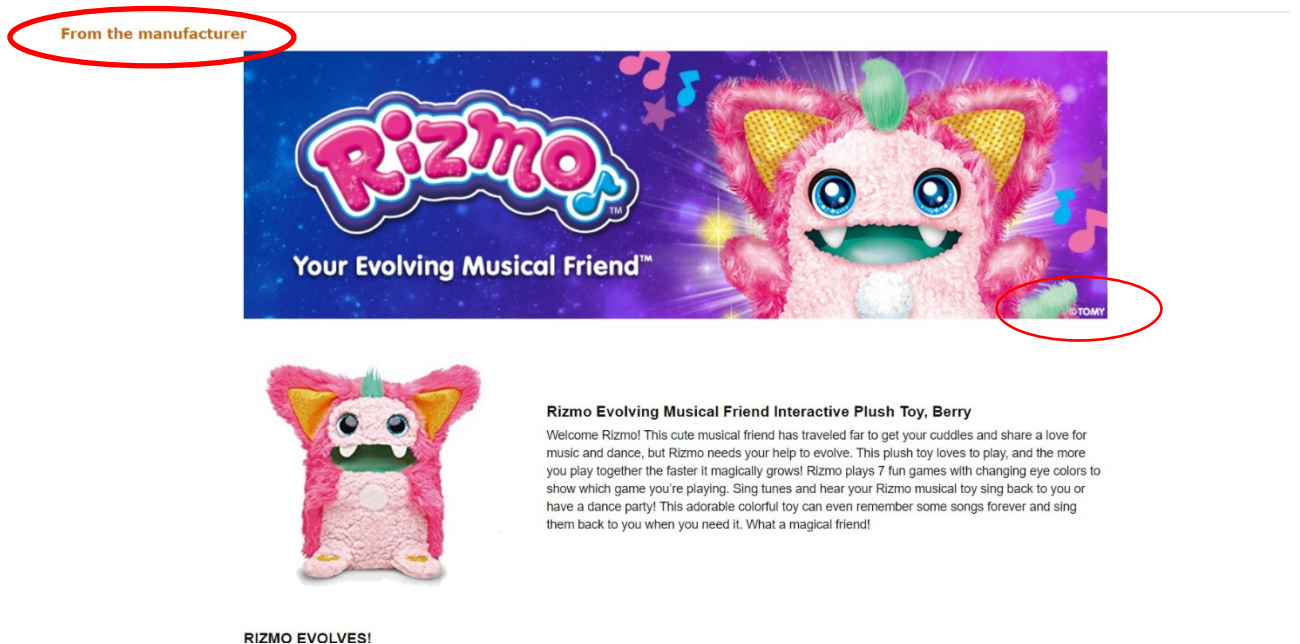
13. The following are true and correct product instructions for Rizmo identifying TOMY International:



14. The following are true and correct of Rizmo play instructions identifying TOMY International:



15. By way of further example, TOMY International allows Amazon.com to show a TOMY International promotional graphic Rizmo on the web page offering Rizmo for sale, under the “From the manufacturer” section of the Amazon.com web page:



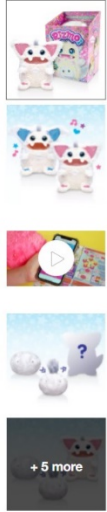
https://www.amazon.com/Rizmo-Evolving-Musical-Friend-Interactive/dp/B07WNJQCFN/ref=asc_df_B07WNJQCFN/?tag=&linkCode=df0&hvadid=385177046112&hvpos=&hvnetw=g&hvrnd=16727666873688455587&hvpone=&hvptwo=&hvmqmt=&hvdev=c&hvdvcmdl=&hvlocint=&hvlocphy=9010953&hvtargid=pla-820903442596&ref=&adgrpid=73788928450&th=1

16. By way of further example, TOMY International allows Target.com to show a Rizmo promotional material for the Target.com web page offering Rizmo for sale.

Target / Toys / Dolls & Dollhouses / Electronic Pets

Rizmo Interactive Evolving Musical Plush Toy - Snow

[Shop all Rizmo](#)



\$18.79

★★★★☆ 66 2 Questions

Save 5% every day
With RedCard

Pay over time
With Affirm on orders over \$100

Quantity
1

Deliver to 30339

[Edit zip code](#)

Ship it

Get it by Mon, Aug 9 with free standard shipping on \$35 orders

This item isn't sold in stores

Add to registry

[Help us improve this page](#)

<https://www.target.com/p/rizmo-interactive-evolving-musical-plush-toy-snow/-/A->

[76161993?ref=tgt_adv_XS000000&AFID=google_pla_df&fndsrc=tgtao&DFA=71700000012544494&CPNG=PLA_Toys%2BShopping%7CToys_Ecomm_Hardlines&adgroup=SC_Toys&LID=7000000001170770pgs&LNM=PRODUCT_GROUP&network=g&device=c&location=9010943&targetid=pla-817763102866&ds_rl=1246978&ds_rl=1248099&gclid=EA1aIQobChMI3pSnk8OS8gIVtWxvB2b8gIsEAQYASABEgKY8PD_BwE&gclsrc=aw.ds](https://www.target.com/p/rizmo-interactive-evolving-musical-plush-toy-snow/-/A-76161993?ref=tgt_adv_XS000000&AFID=google_pla_df&fndsrc=tgtao&DFA=71700000012544494&CPNG=PLA_Toys%2BShopping%7CToys_Ecomm_Hardlines&adgroup=SC_Toys&LID=7000000001170770pgs&LNM=PRODUCT_GROUP&network=g&device=c&location=9010943&targetid=pla-817763102866&ds_rl=1246978&ds_rl=1248099&gclid=EA1aIQobChMI3pSnk8OS8gIVtWxvB2b8gIsEAQYASABEgKY8PD_BwE&gclsrc=aw.ds)

PERSONAL JURISDICTION AND VENUE

17. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284-85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. §§ 1331 and 1338(a).

18. TOMY International has availed itself of the privilege of doing business in Illinois, including in this judicial district. Upon information and belief, TOMY International has regular and established places of business in Illinois, including within this judicial district.

19. Upon information and belief, TOMY International has furthermore hired and retained employees who worked in this judicial district and who tested the features and functions of the Infringing Products at least as early as 2019, and otherwise advanced the sale of TOMY products, including sales of the Infringing Products at least as early as 2019.

20. This Court has personal jurisdiction over TOMY International in this action because TOMY International has committed acts within the Northern District of Illinois giving rise to this action and has established minimum contacts with this forum such that the exercise of jurisdiction over TOMY International would not offend traditional notions of fair play and substantial justice.

21. Since at least as early as 2019, TOMY International has committed and continues to commit acts of infringement in this district by importing the Infringing Products into the stream of commerce in the United States, and testing and otherwise using the Infringing Products (including using them to demonstrate features and functions of the Infringing Products for the purposes of creating demonstrating them and otherwise creating advertising and marketing materials and videos for them), including in this judicial district.

22. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b).

23. TOMY International also derives benefits from its presence in the district, both physical and online through purchases made using one or more interactive web sites, and sales by its retail partners with stores located in this judicial district.

24. TOMY International is subject to this Court's specific and general personal jurisdiction under due process and/or the Illinois Long Arm Statute. This is due, *inter alia*, to its substantial business in this forum, including: (i) a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct in

Illinois, and/or deriving substantial revenue from goods and services provided to individuals in Illinois, including this district.

COUNT I
(Infringement of the 108 Patent)

25. Count I incorporates the contents of the preceding paragraphs 1-24 as if restated fully herein.

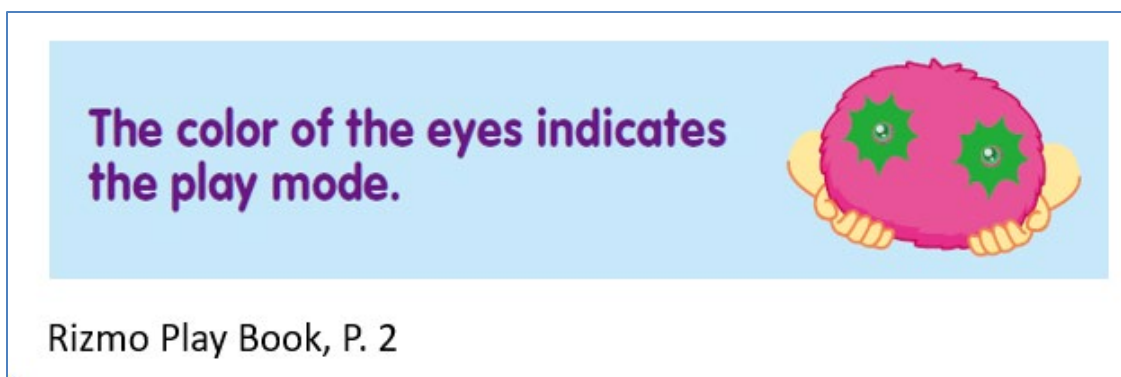
26. TOMY International directly infringes at least Claim 61 of the 108 Patent, as detailed herein.

27. TOMY International makes, uses, imports into, sells and offers for sale the Infringing Products in the United States, including the Rizmo (including Berry Rizmo, Aqua Rizmo, and Snow Rizmo, among others). The Rizmo was released by TOMY International at least as early as September 14, 2019. Unless otherwise noted, these varieties each possess the same features, functions and components described herein with respect to the 108 Patent.

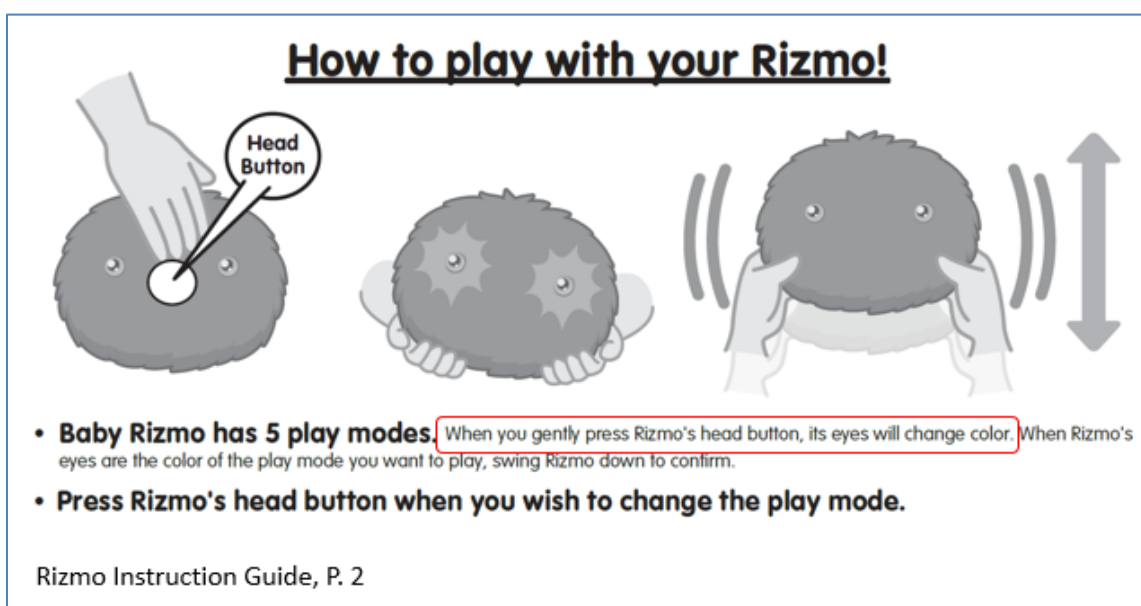
28. As discussed below, the Rizmo is an interactive play device that performs a method of interacting between the device and the user.

29. Each Rizmo generates a plurality of interactions for providing interactive effects (including sound effects and visual effects) with the user, in accordance with the “Rizmo Play Book” and “Rizmo Instruction Guide”.

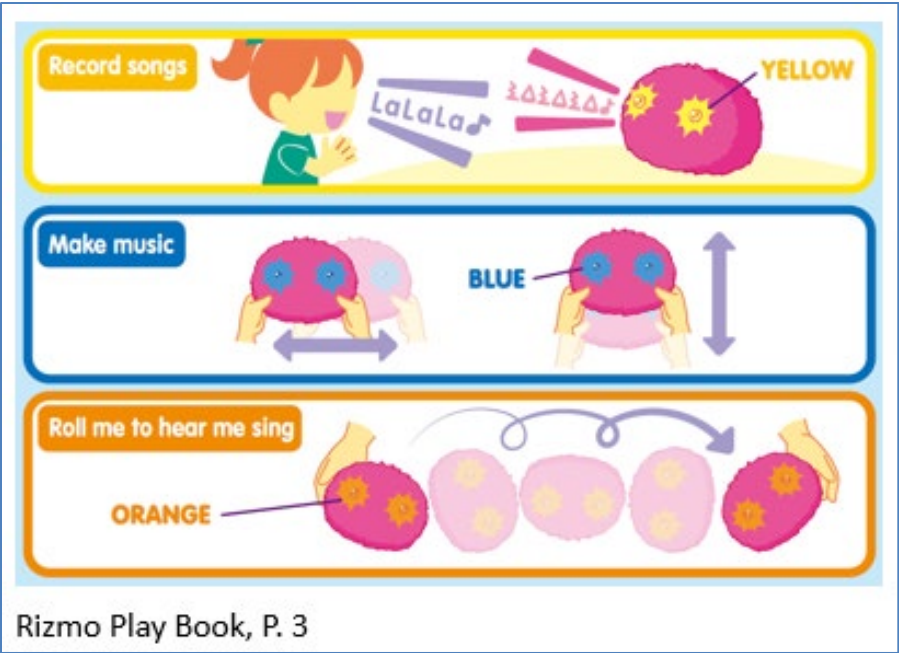
30. For example, Rizmo’s eyes can change colors in response to user interactions:



When the user gently presses Rizmo's head button, its eyes will change color:



31. As further examples, Rizmo, which has an auditory sensor, allows the user to record songs when the user sings to it, and the Rizmo's eyes turn yellow when it is listening to and recording songs; Rizmo can make music when it is moved up and down, and its eyes light up blue; when the user rolls Rizmo, it can sing, and its eyes light up orange:



32. The Rizmo generates motion-based interactions with the user. For example, Rizmo chest light color will change in response to how a user moves Rizmo, or when a user claps his or her hands:

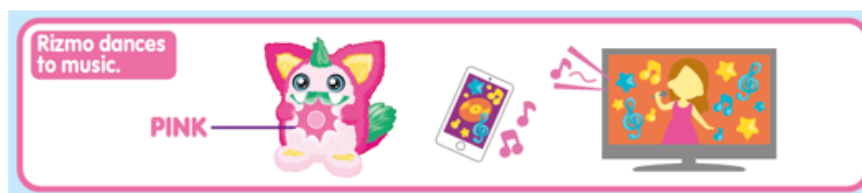


33. By further example, if the user plays music for Rizmo, Rizmo can dance to the music:

Pink: Dance to Music

Rizmo loves to dance to the beat! Play some music and
Rizmo will perform a groovy dance!

Rizmo Instruction Guide, P. 3



Rizmo Play Book, P. 5

34. Each Rizmo also stores interaction counts that are incremented in response to a user's response to an interaction.

35. Specifically, each Rizmo stores user's responses to interactions in its memory. In particular, the interactions are the user playing music to Rizmo, and information associated with these musical interactions are stored as "musical points" and the number of songs that the user has taught Rizmo:

4 To evolve, Rizmo needs a minimum of
25 musical points AND 15 recorded songs.

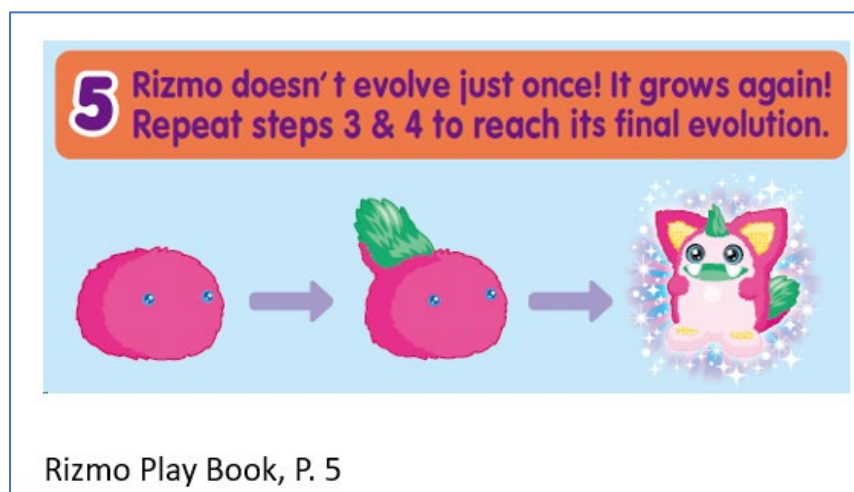
Feed Rizmo with music! If you hear a bell jingle after
playing a game mode, Rizmo earned a musical point.

Rizmo Play Book, P. 4

36. These interactions are stored, and when they reach a threshold interaction count (25 musical points, 15 songs), Rizmo evolves to another state:



37. Moreover, if another threshold is reached, based on more interactions with the user of the similar sort, the Rizmo advances to the final evolutionary state:



Rizmo's final evolution!

- **Rizmo doesn't evolve just once! It grows again!**

For its final evolution, Kid Rizmo needs to win another 35 musical points including a minimum of 15 new recorded songs. Rizmo is ready to evolve when its eyes start changing colors (red, blue, yellow).

Rizmo Instruction Guide, P. 3



38. As shown and described above in Paragraphs 35-37, Rizmo processes the stored user's responses to derive knowledge information related to how the user has interacted with the device.

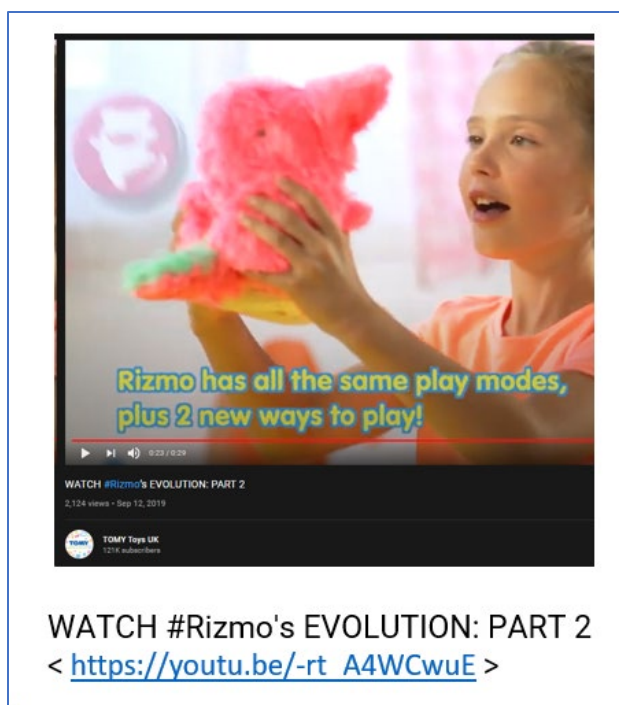
39. Specifically, each Rizmo processes the stored user's responses as it related to teaching Rizmo songs, and the musical points are also reflective of that interaction, and stores this information as knowledge information by incrementing a counter to derive knowledge information pertaining to how (including to what extent) the user has interacted with the Rizmo (*e.g.*, how many musical points does Rizmo have, and how many songs has it been taught). Rizmo further processes this count and compares it against another item of data – this item is a threshold number of musical points or songs. If the threshold is reached (*e.g.*, 35 musical points, 15 songs minimum), then the Rizmo advances to its next evolutionary state. Moreover, if another, second threshold is reached, then the Rizmo can be advanced to the final evolutionary state.

40. As shown and described above in Paragraphs 35-39, each Rizmo employs derived knowledge information (*e.g.*, musical points, songs) to reach different evolutionary states, where it is operated in a manner different from other states.

41. For example, when the Rizmo transforms from the Baby Rizmo state to the Kid Rizmo state, it operates in a manner that is distinct from when it was a Baby Rizmo:



42. In its final evolutionary state, the Rizmo operates in a manner that is distinct from when it was a Kid Rizmo:



43. The Rizmo thus employs knowledge information about how (including to what extent) the user has interacted with Rizmo to operate in a distinct manner (progressing from Baby Rizmo to Kid Rizmo to Final Rizmo based on user interactions) that is different from the operation of a similar device (same Rizmo type) with a different knowledge information (remaining in an earlier state due to fewer user interactions indicative of less play).

44. Furthermore, as described above, the Rizmo learns different songs from user to user.

45. Therefore, each Rizmo infringes Claim 61 of the 108 Patent, as it is a method for an interactive play device for interacting between the device and the user, having the steps of:

generating a plurality of interactions for providing interactive effects with the user,

storing user's responses to interactions,

processing stored user's responses to derive knowledge information related to how the user has interacted with the device, and

employing said derived knowledge information to operate the device in a distinct manner that is different from the operation of a similar device with different knowledge information.

46. Because all elements of at least one claim of the 108 Patent are present in each of the Infringing Products, either literally or under the doctrine of equivalents, TOMY International's past and present manufacture, importation, use, sales and offers for sale of the Infringing Products in the United States, as well as its support and encouragement of others to do the same, infringe at least independent Claim 61 of the 108 Patent.

COUNT II (Infringement of the 072 Patent)

47. Count II incorporates the contents of the preceding paragraphs 1-46 as if restated fully herein.

48. TOMY International directly infringes at least independent Claim 32 of the 072 Patent, as detailed herein.

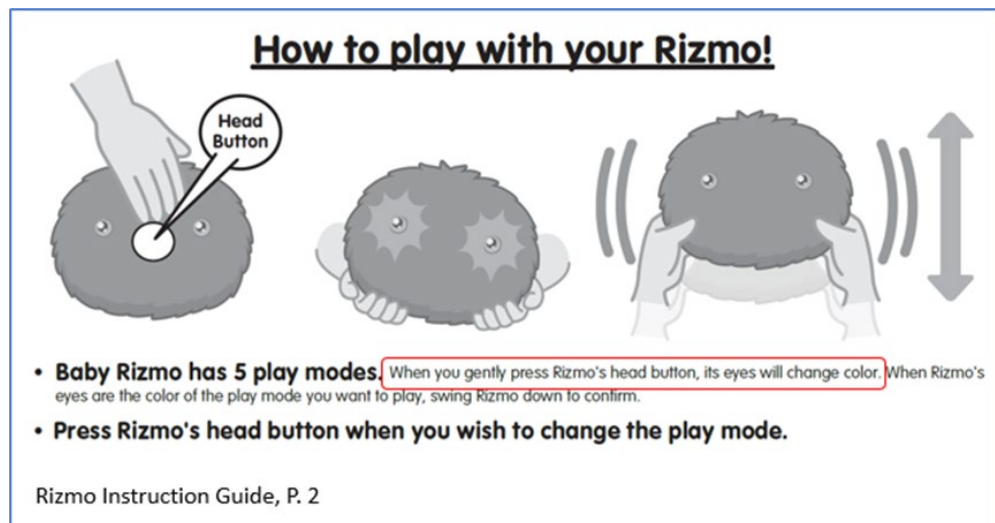
49. TOMY International makes, uses, imports into, sells and offers for sale the Infringing Products in the United States, including the Rizmo (including Berry Rizmo, Aqua Rizmo, and Snow Rizmo, among others). The Rizmo was released by TOMY International at least

as early as September 14, 2019. Unless otherwise noted, all of these varieties of Rizmo possess the same features, functions and components described herein with respect to the 072 Patent.

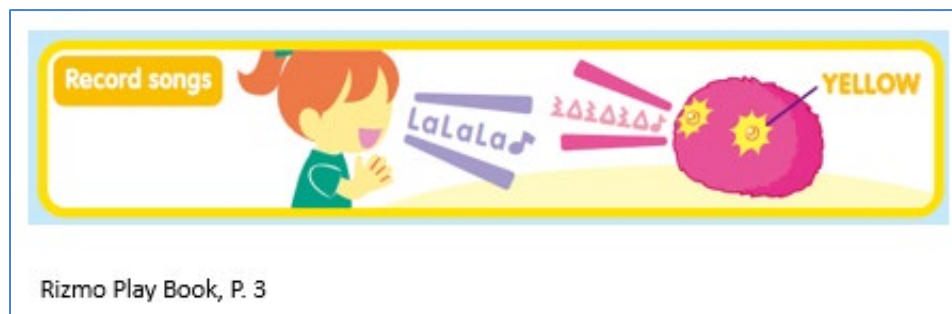
50. As discussed below, the Rizmo is an interactive play device for interacting between the device and the user.

51. Each Rizmo necessarily needs to be equipped with a processor encoded with a computer program to control the operation of the device, as described herein.

52. Each Rizmo employs a plurality of input control mechanisms for the user to interact with the Rizmo. These input control mechanisms include, for example, a “Head Button”:



53. The Rizmo also has sound/auditory sensors to detect music, allowing it to record songs:



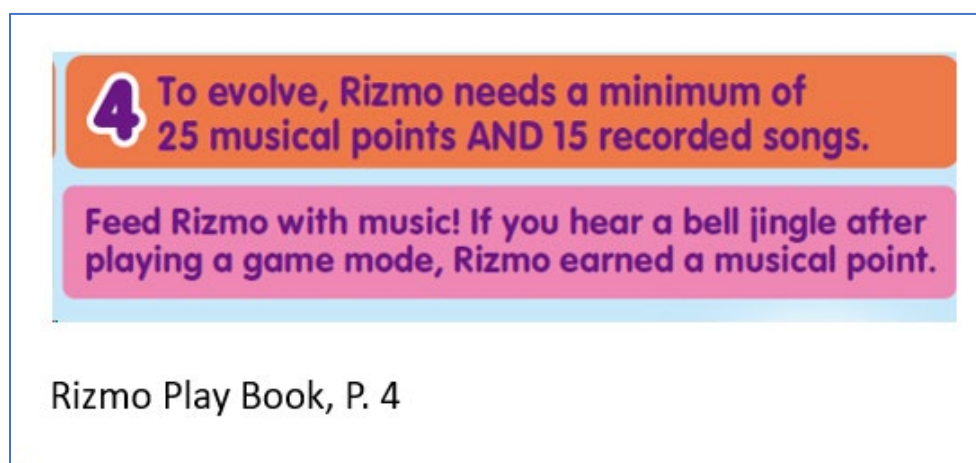
54. Each Rizmo also contains sensors that detect the movement of the Rizmo from left to right, and up and down:



55. Each Rizmo includes memory to store information, and to retain information and knowledge gained from a plurality of past interactions with the user, as described below.

56. Additionally, each Rizmo gains knowledge from a plurality of past interactions with the user, and can operate in a plurality of states. These states are entered into (Rizmo evolves into each state) when threshold interactions are met.

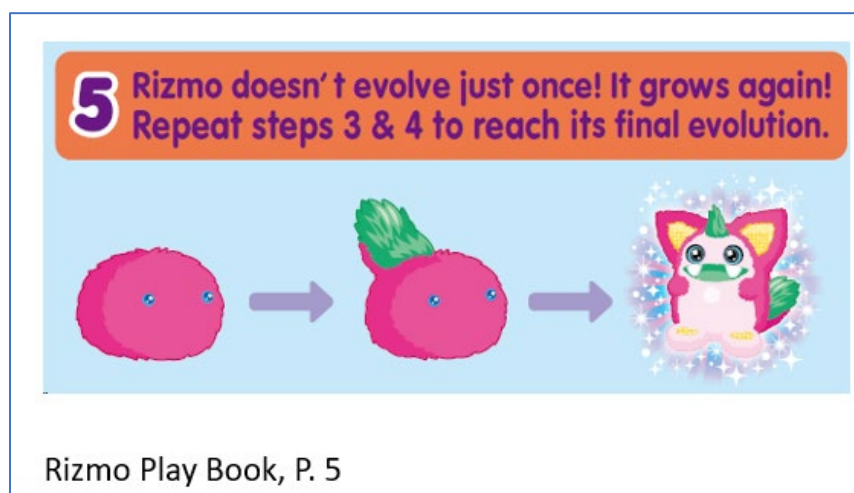
57. Each Rizmo stores user's responses to interactions in its memory. In particular, the interactions are the user playing music to Rizmo, and information associated with these musical interactions are stored as "musical points" and the number of songs that the user has taught Rizmo:



58. These interactions are stored, and when they reach a threshold interaction count (25 musical points, 15 songs), Rizmo evolves to another state:



59. Moreover, if another threshold is reached, based on more interactions with the user of the similar sort, then the Rizmo advances to the final evolutionary state:



Rizmo's final evolution!

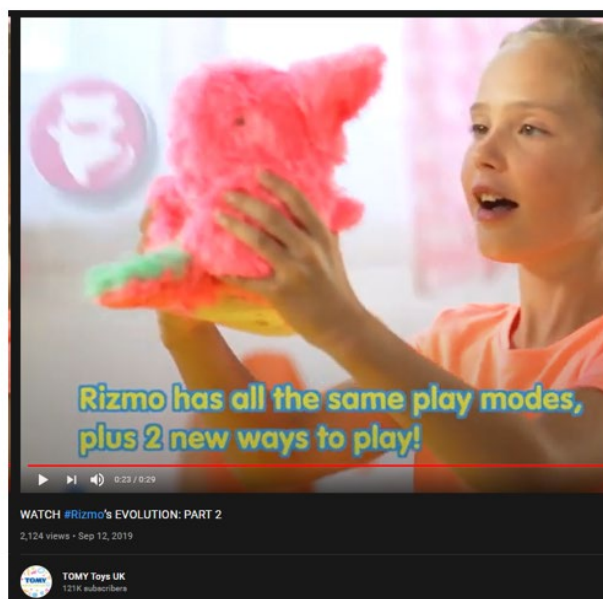
- **Rizmo doesn't evolve just once! It grows again!**

For its final evolution, Kid Rizmo needs to win another 35 musical points including a minimum of 15 new recorded songs. Rizmo is ready to evolve when its eyes start changing colors (red, blue, yellow).

Rizmo Instruction Guide, P. 3



60. Each Rizmo provides two or more distinct interactions during at least one of said plurality of states. Specifically, once Rizmo achieves the final state, it is able to operate in two new ways (2 distinct interactions) during the final state:



WATCH #Rizmo's EVOLUTION: PART 2
< https://youtu.be/-rt_A4WCwuE >



61. As detailed above, each Rizmo is able to generate a plurality of interactions with the user. As demonstrated above, these include learning songs, and changing colors based on the user's movement of Rizmo.

62. Further, as detailed above, each Rizmo stores information in device memory related to the user's interactions.

63. Further, as detailed above, the stored information includes the user's preferences – the user can choose which songs it wants Rizmo to learn.

64. Further, each Rizmo transforms from the Baby Rizmo state to the Kid Rizmo state to the final state, based on the number of musical points it has attained, and the number of songs it has learned.

65. Therefore, each Rizmo infringes at least Claim 32 of the 072 Patent, as it is an interactive play device for interacting between the device and a user, wherein the device includes a microprocessor with a computer-readable medium encoded with a computer program to control the operation of the device, wherein the device employs a plurality of input control mechanisms for the user to interact with the device, wherein the device includes memory to store information,

wherein the device gains knowledge from a plurality of past interactions with the user, and can operate in a plurality of states, and wherein the device provides two or more distinct interactions during at least one of said plurality of states, a method for controlling the device having the steps of:

generating a plurality of interactions;

storing information in device memory related to user's interactions;

employing said stored information to establish knowledge information that includes at least one of user's responses to interactions by the device, pattern of user's interactions, user's preferences in responding to interactions by the device, user's skill in interacting with the device, and personal information pertaining to the user; and

transforming the device from a current operating state to a different operating state based on said knowledge information and in response to user's activations of said input control mechanisms.

66. Because all elements of at least one claim of the 072 Patent are present in each of the Infringing Products, either literally or under the doctrine of equivalents, TOMY International's past and present manufacture, importation, use, sales and offers for sale of the Infringing Products in the United States, as well as its support and encouragement of others to do the same, infringe at least independent Claim 32 of the 072 Patent.

PRAYER FOR RELIEF

WHEREFORE, IPD respectfully requests the Court to enter judgment as follows:

- A. That Defendant has infringed the Ghaly Patents;
- B. That Defendant is ordered to pay damages adequate to compensate IPD for its infringement of the Ghaly Patents, but in no event less than a reasonable royalty, together with pre-judgment and post-judgment interest thereon, as allowed by 35 U.S.C. § 284;
- C. That Defendant is ordered to account for any post-verdict infringement and pay no less than a reasonable royalty, together with interest, thereon;

D. That IPD be granted such other and additional relief as the Court deems just and proper.

JURY DEMAND

IPD hereby demands a jury trial as to all issues so triable.

Dated: September 30, 2021

Respectfully submitted,

/s/ Timothy J. Haller

Timothy J. Haller (*Local Counsel*)

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